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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE AVANINDRA KUMAR SINGH**

ON THE 8th OF AUGUST, 2023

MISC. APPEAL No. 5738 of 2019

BETWEEN:-

VIDYA JAIN W/O SHRI SHEETAL CHAND JAIN, AGED ABOUT 65 YEARS, OCCUPATION: HOUSE WIFE R/O H.NO. P/28, SHIV NAGAR NEAR JAIN TEMPLE, P.S. VIJAYNAGAR, DISTT. JABALPUR (M.P.) (MADHYA PRADESH)

....APPELLANT

BY SHRI ATUL RAI - ADVOCATE

AND

- 1. ARVIND SHARMA S/O BASUDEV SHARMA R/O QUARTER NO.610 NAYAPURA HINOTIYA ALAM, KOLAR ROAD, P.S. KOLAR DISTT. BHOPAL (M.P.) (MADHYA PRADESH)**
- 2. RAJYAPAL ABHIKARAN BHOPAL PVT. LTD. THR. MANAGER IN FRONT OF THE MARK HOTEL HOSHANGABAD ROAD, MISROD, (MADHYA PRADESH)**
- 3. UNITED INDIA INSURANCE CO. LTD OFFICE 1454 RAJKIRAN BHAWAN IN FRONT OF ASHOKA HOTEL, WRIGHT TOWN JABALPUR (MADHYA PRADESH)**

.....RESPONDENTS

(NONE FOR RESPONDENT NOS. 1 AND 2)

(BY MS. ANJALI BANERJEE – ADVOCATE FOR RESPONDENT NO. 3)

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Reserved on :- 02-08-2023

Pronouncement:- 08-08-2023

This appeal having been heard and reserved for orders, coming on for pronouncement this day, **JUSTICE AVANINDRA KUMAR SINGH** passed the following:-

ORDER

1] This appeal has been filed by the claimant/appellant against the award dated 23-09-2019 (Annexure-A/1) passed in M.AC.C. No. 1658/2017 (Vidya Jain vs. Arvind Sharma and Ors.) for enhancement of the award.

2] It is not disputed that learned Claims Tribunal has awarded Rs. 2, 94,000/- along with interest to the appellant/claimant.

3] In nutshell the case of the appellant is that the appellant has filed Claim Case under Section 166 of Motor Vehicles Act, for the accident which took place on 24-02-2017, in which, the respondent No. 1- Arvind Sharma travelling in TOYOTA CAR MP-04-CL-1683 rashly and negligently overturned the vehicle due to which, the appellant sustained grievous injury on her right hand and she was operated. She had claimed compensation of Rs. 30,00,000/-. It is further submitted that she was operated in Jamdar Hospital and a plate was inserted. She was on ventilator for a month for injury on her spleen. As she did not recover fully well at Dr. Jamdar's Hospital, she was admitted to Platina Hospital, Nagpur and then admitted to Wockhardt Hospital, Nagpur where she was operated for injury of D-8 and L-5.

4] The Crime No. 215/17 was registered at Police Station Gadarwara District- Narsinghpur due to accident. The claimant is suffering from serious bodily injury and permanent disability has occurred and she is not able to walk and lead her normal life.

5] Respondent No. 1 and 2 did not file the written statement and were proceeded *ex parte*. The Insurance Company has denied the averments of the

claim petition stating that the driver did not have the valid driving licence.

6] The appeal has been filed on the ground that learned Claims Tribunal has not properly considered the factual situation regarding physical condition and treatment of appellant after the accident and has awarded lesser compensation by ignoring the medical bills of Platina Hospital and Wockhardt Hospital, Nagpur. She has been awarded lesser compensation on account of loss of future income and the Tribunal has not considered, that she has engaged one female attendant for which, she has to pay Rs. 8,000/- per month. It is further submitted that permanent disability has arbitrarily been reduced from 30% to 20% on presumption hence, prays for enhancement of compensation.

7] The Insurance Company submits that the awarded compensation is on the higher side although, the Insurance Company has not filed cross-objection and accordingly, prays for dismissal of this appeal.

8] The question before this Court is whether in the facts and circumstances of the case, the learned trial Court has erroneously awarded less compensation.

9] During the pendency of appeal, the appellant has filed application *under 41 Rule 27 of Civil Procedure Code* vide IA No. 13116/19. It is submitted that duplicate discharge summary ticket of Jamdar Hospital (Annexure-A/2) and bills of Platina Hospital (Annexure-A/3) and Wockhardt Hospital (Annexure -A/4) which were handed over to the learned counsel but, due to his mistake such documents could not be filed with the claim petition and therefore, for just decision of this case, documents may be taken on record. Affidavit has been filed and copy of documents have been filed.

10] To decide above application, a perusal of evidence of claimant before Claims Tribunal is necessary. Before the Claims Tribunal while making

statement in support of her claim, the appellant has filed an affidavit under *Order 18 Rule 4 of CPC*, in which she has stated that due to the accident, she got fracture in her right hand and ribs were broken, due to this, she had an attack (heart attack not mentioned).

11] In cross-examination of the Insurance Company in paragraph-4, she has specifically mentioned that she neither worked before the accident nor she works after the accident. In paragraph-6, she has mentioned that after the accident, she was operated at Government Hospital at Gadarwara. She was admitted there for 15 days. After that, she was admitted in Jamdar Hospital, where she developed heart related disease. After discharge from Jamdar Hospital, she got treatment at Nagpur. She specifically also mentioned that after she was admitted in Jamdar Hospital, she came to know that there was pain her heart. In paragraph-7, she said that :-

7. "डॉक्टर ने बताया था कि गम्भिर चोटे आने एवं पसलियों टूटने के कारण अटेक आ गया। यह सही है कि बोखार्ड अस्पताल, प्लेटिना अस्पताल नागपुर व बंसल अस्पताल भोपाल में मेरे हृदय का इलाज हुआ है। यह बात सही है कि जामदार अस्पताल के डिस्चार्ज कार्ड में मुझे अस्तमा का मरीज बताया गया था।"

12] Therefore, looking to the statement of claimant -Vidya Jain as mentioned above, learned Tribunal in the impugned award at paragraph-43 has rightly discounted the bills of Platina Hospital and Wockhardt Hospital, Nagpur. Without examining the doctors at Gadarwara Govt. Hospital, Jamdar Hospital or doctor from Platina Hospital or Wockhardt Hospital, Nagpur she has failed to establish a connection between her accident and injury sustained in accident of fracture and heart ailments. Hence, there was no option but, to disallow and discount those bills for the learned Claims Tribunal.

13] Accordingly, IA No. 13116/19, an application under *Order 41 Rule 27 of CPC* cannot be allowed as documents filed with application are not

necessary for deciding this appeal. Therefore, IA No. 13116/19 stands rejected.

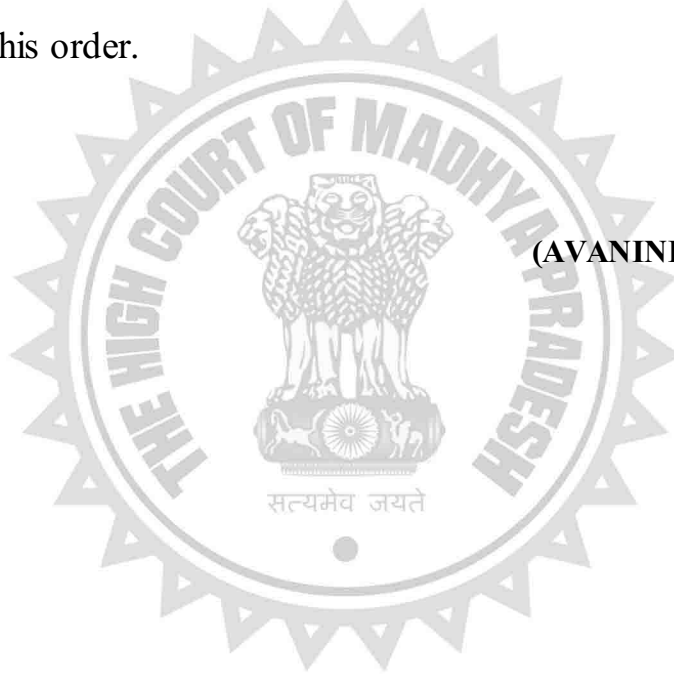
14] The second ground of appeal is that Dr. Sharad Dwivedi of Victoria Hospital, Jabalpur has assessed the disability at 30% which has not been believed by the learned Claims Tribunal and it has arbitrarily assessed the disability at 20%. It is clearly noticeable that applicant's witness No. 2- Dr. Sharad Dwivedi has not been examined by the claimants as Member of the Medical Board. Infact, certificate Ex. No. 248 has been signed by the doctor in individual capacity. In cross-examination, applicant witness No. 2, in paragraph-3 has clearly admitted that he never treated the injured. Disability is of mild nature and he has not mentioned as to how the disability was calculated in the certificate. Hence, as the doctor has neither treated nor examined as a Member of the Medical Board, this court is unable to hold that inspite of 30% disability, on the basis of evidence, the Tribunal was wrong in holding that her earning capacity has only reduced by 20 %. (Please see:- ***Sidram vs. Division Manager, United India Insurance Company Ltd and another 2022 SCC online SC 1597*** held in paragraph- 40(18) as under:-

“40(18). The Tribunal should also act with caution, if it proposed to accept the expert evidence of doctors who did not treat the injured but who give “ready to use” disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily give liberal disability certificates to help the claimants. But where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificates. The Tribunal may invariably make it a point to require the evidence of the doctor who treated the injured or who assessed the permanent disability. Mere production of a disability certificate or discharge certificate will not be proof of the extent of disability stated therein unless the doctor who treated the claimant or who medically examined and assessed the extent of disability of the claimant, is tendered for cross-examination with reference to the certificate. If the Tribunal is not satisfied with the medical evidence produced by the claimant, it can constitute a Medical Board (from a panel maintained by it in consultation with reputed local hospitals/medical colleges) and refer the claimant to such Medical Board for assessment of the disability.”

15] The last ground of appeal is that the appellant is paying Rs. 8,000/- per month to the attendance required for her daily needs after the accident. Although, it has been pleaded in the claim petition but, there is no statement to this effect in affidavit under Order 18 Rule 4 of CPC, hence, on this ground also award of the learned Claims Tribunal cannot be faulted with.

16] Accordingly, this appeal fails on second ground and it is dismissed. The award of Claims Tribunal dated 23-09-2019 is hereby affirmed.

17] Let the record of the concerned Court be sent back along with copy of this order.



(AVANINDRA KUMAR SINGH)
JUDGE